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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 THE BANK OF NEW YORK MELLON,
8 Plaintiff(s),
9 v.
10 SOUTHERN HIGHLANDS COMMUNITY
11 ASSOCIATION, et al.,
12 Defendant(s).

Case No. 2:17-CV-2146 JCM (GWF)

ORDER

13
14 Presently before the court is defendant Southern Highlands Community Associations'
15 ("Southern Highlands") motion for summary judgment. (ECF No. 48). Plaintiff The Bank of New
16 York Mellon ("BNYM") filed a response (ECF Nos. 56), to which Southern Highlands replied
17 (ECF No. 61).

18 Also before the court is BNYM's motion for summary judgment. (ECF No. 49).
19 Defendants SFR Investments Pool 1, LLC ("SFR") and Southern Highlands filed separate
20 responses (ECF Nos. 54, 58, 60), to which BNYM replied (ECF No. 62).

21 Also before the court is SFR's motion for summary judgment. (ECF No. 51). BNYM has
22 not filed a response and the time to do so has passed.

23 **I. Facts**

24 This action arises from a dispute over real property located at 4002 Trapani Place, Las
25 Vegas, Nevada 89141 ("the property"). (ECF No. 1).

26 Richard Ocasio refinanced the property on December 6, 2004 with a loan in the amount of
27 \$168,992.00 from Countrywide Home Loans, Inc. ("Countrywide"). (ECF No. 49-1).
28 Countrywide secured the loan with a deed of trust, which names Countrywide as the lender and

1 beneficiary, and CRC Real Estate Services as the trustee. *Id.* On September 20, 2012, BNYM
2 acquired all beneficial interest in the deed of trust via an assignment, which BNYM recorded with
3 the Clark County recorder's office. *Id.*

4 On March 31, 2011, Southern Highlands, through its agent Alessi & Koenig, LLC
5 ("A&K"), recorded a notice of delinquent assessment lien ("the lien") against the property for
6 Ocasio's failure to pay Southern Highlands in the amount of \$947.95. (ECF No. 49-2). On July
7 29, 2011, Southern Highlands recorded a notice of default and election to sell pursuant to the lien,
8 stating that the amount due was \$2,398.09 as of July 12, 2011. *Id.*

9 On December 30, 2011, Southern Highlands recorded a notice of trustee's sale against the
10 property. (ECF No. 49-2). In an attempt to exercise its right of redemption, BNYM's predecessor
11 in interest requested from Southern Highlands the superpriority amount of the lien. *Id.* Southern
12 Highlands did not reply. *Id.*

13 On August 21, 2012, Southern Highlands recorded a second notice of trustee's sale against
14 the property. (ECF No. 47-6). On September 19, 2012, Southern Highlands sold the property in
15 a nonjudicial foreclosure sale to SFR in exchange for \$10,100.00. *Id.* On September 24, 2013,
16 Southern Highlands recorded the deed of foreclosure in favor of SFR with the Clark County
17 recorder's office. *Id.*

18 On August 10, 2017, BNYM filed a complaint, alleging four causes of action: (1) quiet
19 title/declaratory judgment against all defendants; (2) breach of NRS 116.1113 against Southern
20 Highlands; (3) wrongful foreclosure against Southern Highlands; and (4) injunctive relief against
21 SFR. (ECF No. 1).

22 Now, Southern Highlands, BNYM, and SFR have filed cross-motions for summary
23 judgment, requesting that the court resolve whether the foreclosure sale extinguished the deed of
24 trust. (ECF Nos. 48, 49 51).

25 **II. Legal Standard**

26 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
27 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
28 show that "there is no genuine dispute as to any material fact and the movant is entitled to a

1 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is
2 “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
3 323–24 (1986).

4 For purposes of summary judgment, disputed factual issues should be construed in favor
5 of the nonmoving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to
6 withstand summary judgment, the nonmoving party must “set forth specific facts showing that
7 there is a genuine issue for trial.” *Id.*

8 In determining summary judgment, a court applies a burden-shifting analysis. “When the
9 party moving for summary judgment would bear the burden of proof at trial, it must come forward
10 with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at
11 trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine
12 issue of fact on each issue material to its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests.,*
13 *Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

14 By contrast, when the nonmoving party bears the burden of proving the claim or defense,
15 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
16 element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving party failed
17 to make a showing sufficient to establish an element essential to that party’s case on which that
18 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving
19 party fails to meet its initial burden, summary judgment must be denied and the court need not
20 consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
21 60 (1970).

22 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
23 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
24 *Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party need not establish a dispute of material
25 fact conclusively in its favor. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
26 626, 631 (9th Cir. 1987). It is sufficient that “the claimed factual dispute be shown to require a
27 jury or judge to resolve the parties’ differing versions of the truth at trial.” *Id.*

1 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
2 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,
3 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
4 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
5 for trial. *See Celotex*, 477 U.S. at 324.

6 At summary judgment, a court's function is not to weigh the evidence and determine the
7 truth, but to determine whether a genuine dispute exists for trial. *See Anderson v. Liberty Lobby,*
8 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is "to be believed, and all
9 justifiable inferences are to be drawn in his favor." *Id.* at 255. But if the evidence of the
10 nonmoving party is merely colorable or is not significantly probative, summary judgment may be
11 granted. *See id.* at 249–50.

12 **III. Discussion**

13 Southern Highlands, BNYM, and SFR move for summary judgment, requesting the court
14 to declare that the deed of trust still encumbers the property. (ECF Nos. 48, 49, 51). Because
15 BNYM has failed to provide sufficient grounds to set aside the foreclosure sale, the court will deny
16 BNYM's motion for summary judgment and grant Southern Highlands and SFR's motions for
17 summary judgment.

18 Under Nevada law, "[a]n action may be brought by any person against another who claims
19 an estate or interest in real property, adverse to the person bringing the action for the purpose of
20 determining such adverse claim." Nev. Rev. Stat. § 40.010. "A plea to quiet title does not require
21 any particular elements, but each party must plead and prove his or her own claim to the property
22 in question and a plaintiff's right to relief therefore depends on superiority of title." *Chapman v.*
23 *Deutsche Bank Nat'l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation
24 marks omitted). Therefore, a party must show that its claim to the property is superior to all others
25 in order to succeed on a quiet title action. *See also Breliant v. Preferred Equities Corp.*, 918 P.2d
26 314, 318 (Nev. 1996) ("In a quiet title action, the burden of proof rests with the plaintiff to prove
27 good title in himself.").

1 NRS 116.3116 *et seq.*¹ (“Chapter 116”) allows an HOA to place a lien on its homeowners’
2 residences for unpaid assessments and fines. Nev. Rev. Stat. § 116.3116(1). Under NRS
3 116.3116(2), HOA liens have priority over other encumbrances. Nev. Rev. Stat. § 116.3116(2).
4 However, some encumbrances are not subject to an HOA lien’s priority, including “[a] first
5 security interest on the unit recorded before the date on which the assessment sought to be enforced
6 became delinquent.” Nev. Rev. Stat. § 116.3116(2)(b).

7 Chapter 116 then provides an exception to the subparagraph (2)(b) exception for first
8 security interests. *See* Nev. Rev. Stat. § 116.3116(2). In *SFR Investments Pool 1 v. U.S. Bank*, the
9 Nevada Supreme Court provided the following explanation:

10 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces,
11 a superpriority piece and a subpriority piece. The superpriority piece, consisting of
12 the last nine months of unpaid HOA dues and maintenance and nuisance-abatement
charges, is “prior to” a first deed of trust. The subpriority piece, consisting of all
other HOA fees or assessments, is subordinate to a first deed of trust.

13 334 P.3d 408, 411 (Nev. 2014) (“*SFR Investments*”).

14 Under Chapter 116, an HOA can enforce its superpriority lien with a nonjudicial
15 foreclosure sale. *Id.* at 415. Thus, “NRS 116.3116(2) provides an HOA a true superpriority lien,
16 proper foreclosure of which will extinguish a first deed of trust.” *Id.* at 419; *see also* Nev. Rev.
17 Stat. § 116.3116(2)(1) (providing that “the association may foreclose its lien by sale” upon
18 compliance with the statutory notice and timing rules).

19 NRS 116.3116(1) provides that when an HOA forecloses on a property pursuant to NRS
20 116.3116(4), the following recitals in the deed are conclusive proof of the matters recited:

- 21 (a) Default, the mailing of the notice of delinquent assessment, and the recording
22 of the notice of default and election to sell;
23 (b) The elapsing of the 90 days; and
(c) The giving of notice of sale[.]

26 ¹ The 2015 Legislature revised Chapter 116 substantially. 2015 Nev. Stat., ch. 266. Except
27 where otherwise indicated, the references in this order to statutes codified in NRS Chapter 116 are
28 to the version of the statutes in effect in 2011–13, when the events giving rise to this litigation
occurred.

1 Nev. Rev. Stat. § 116.31166(1)(a)–(c).² “The ‘conclusive’ recitals concern . . . all statutory
2 prerequisites to a valid HOA lien foreclosure sale.” *See Shadow Wood Homeowners Assoc. v. N.Y.*
3 *Cnty. Bancorp., Inc.*, 366 P.3d 1105 (Nev. 2016) (“*Shadow Wood*”). Nevertheless, courts retain
4 the equitable authority to consider quiet title actions even when an HOA’s foreclosure deed
5 contains statutorily conclusive recitals. *See id.* at 1112.

6 Here, the parties have provided the recorded notice of delinquent assessment, the recorded
7 notice of default and election to sell, the recorded notice of trustee’s sale, and the recorded trustee’s
8 deed upon sale. *See* (ECF No. 49-2). Further, the recorded foreclosure deed contains the necessary
9 recitals to establish compliance with NRS 116.31162 through NRS 116.31164. (ECF No. 49-2);
10 *See id.* at 1112. Therefore, pursuant to NRS 116.31166 and the recorded foreclosure deed, the
11 foreclosure sale was valid to the extent that it complied with NRS 116.31162 through NRS
12 116.31164.

13 While NRS 116.3116 accords certain deed recitals conclusive effect, it does not
14 conclusively entitle the buyer at the HOA foreclosure sale to success on a quiet title claim. *See*
15 *Shadow Wood*, 366 P.3d at 1112 (rejecting that NRS 116.31166 defeats, as a matter of law, actions
16 to quiet title). Thus, the question remains whether plaintiff has demonstrated sufficient grounds
17 to justify setting aside the foreclosure sale. *See id.*

18 “When sitting in equity . . . courts must consider the entirety of the circumstances that bear
19 upon the equities. This includes considering the status and actions of all parties involved, including
20 whether an innocent party may be harmed by granting the desired relief.” *Id.*

21
22
23 ² The statute further provides as follows:

24 2. Such a deed containing those recitals is conclusive against the unit's
25 former owner, his or her heirs and assigns, and all other persons. The receipt for the
26 purchase money contained in such a deed is sufficient to discharge the purchaser
from obligation to see to the proper application of the purchase money.

27 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164
28 vests in the purchaser the title of the unit’s owner without equity or right of
redemption.

Nev. Rev. Stat. § 116.31166(2)–(3).

1 BNYM contends that the foreclosure sale did not extinguish the deed of trust for three
2 reasons: (1) BNYM attempted to tender the superpriority portion of the lien; (2) Southern
3 Highlands foreclosed on the property pursuant to an unconstitutional statute; and (3) the
4 foreclosure sale was commercially unreasonable. (ECF No. 49).

5 *i. Tender*

6 BNYM argues that the foreclosure sale did not extinguish the deed of trust because BNYM
7 tendered the superpriority portion of the lien. (ECF No. 49). The court disagrees.

8 Under NRS 116.31166(1), the holder of a first deed of trust may pay off the superpriority
9 portion of an HOA lien to prevent the foreclosure sale from extinguishing the deed of trust. *See*
10 Nev. Rev. Stat. § 116.31166(1); *see also SFR Investments*, 334 P.3d at 414 (“But as a junior
11 lienholder, BOA could have paid off the SHHOA lien to avert loss of its security . . .”). The
12 superpriority portion of the lien consists of “the last nine months of unpaid HOA dues and
13 maintenance and nuisance-abatement charges,” while the subpriority piece consists of “all other
14 HOA fees or assessments.” *SFR Investments*, 334 P.3d at 411; *Horizons at Seven Hills*
15 *Homeowners Association v. Ikon Holdings, LLC*, 373 P.3d 66 (Nev. 2016).

16 BNYM claims that its predecessor provided adequate tender when it requested and offered
17 to pay the superpriority amount. (ECF No. 49) (citing only an unpublished case in support of its
18 contention). In doing so, BNYM’s predecessor in interest improperly presumed that merely
19 offering to pay the superpriority amount was sufficient to preserve the deed of trust.

20 Instead, BNYM’s predecessor in interest could have prevented the foreclosure sale by
21 using available legal remedies—for example, paying the entire lien and then filing suit for a refund
22 of the subpriority portion or seeking a temporary restraining order and a preliminary injunction.
23 *See* Nev. Rev. Stat. §§ 14.010, 40.060; *see also SFR Investments*, 334 P.3d at 418 (noting that the
24 deed of trust holder can pay the entire lien amount and then sue for a refund).

25 After neglecting to use these remedies, BNYM now seeks restore the deed of trust despite
26 its failure to follow the rules set forth in the statutes. *See Shadow Wood Homeowners Assoc. v.*
27 *N.Y. Cmty. Bancorp., Inc.*, 366 P.3d 1105, 1114 n.7 (Nev. 2016) (citing *Barkley’s Appeal.*
28 *Bentley’s Estate*, 2 Monag. 274, 277 (Pa. 1888)) (“[W]e can see no way of giving the petitioner

1 the equitable relief she asks without doing great injustice to other innocent parties who would not
2 have been in a position to be injured by such a decree as she asks if she had applied for relief at an
3 earlier day.”).

4 Accordingly, BNYM’s argument regarding tender does not entitle it to judgment as a
5 matter of law.

6 *ii. Constitutionality of Chapter 116*

7 BNYM argues that the court should grant summary judgment because, under *Bourne*
8 *Valley*, Southern Highlands foreclosed pursuant to a facially unconstitutional state statute. (ECF
9 No. 49); *see Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th Cir. 2016)
10 (“*Bourne Valley*”). However, BNYM’s reliance on *Bourne Valley* is misplaced.

11 In *Bourne Valley*, the Ninth Circuit held that Chapter 116 violated the Due Process Clause
12 of the Fourteenth Amendment because it did not require a party foreclosing on a property to
13 provide notice to a holder of any subordinate security interest. *Bourne Valley*, 832 F.3d at 1159.
14 This conclusion was based on the interpretation that NRS 116.31168(1) did not incorporate NRS
15 107.090, which requires notice of default to any person with a subordinate security interest. *Id.*

16 When the Ninth Circuit ruled in *Bourne Valley*, there was no authority on the interpretation
17 of NRS 116.31168(1). Left with the general doctrines of statute interpretation, the court declined
18 to incorporate NRS 107.090 on the grounds that it would render NRS 116.31168(1) superfluous.
19 *Id.* (citing *S. Nev. Homebuilders Ass’n v. Clark Cnty.*, 117 P.3d 171, 173 (2005)).

20 Since the Ninth Circuit’s decision in *Bourne Valley*, the Nevada Supreme Court has
21 provided its interpretation of Chapter 116, holding that NRS 116.31168(1) does incorporate NRS
22 107.090. *SFR Invs. Pool I, LLC. v. The Bank of N.Y. Mellon*, 422 P.3d 1248, 1252 (Nev. 2018)
23 (expressly refuting *Bourne Valley*). Under this ruling, NRS 116.31168(1) requires notice to
24 subordinate interest holders and, thus, does not violate the Fourteenth Amendment. *Id.*

25 Both the Ninth Circuit and the Supreme Court have recognized, “a [s]tate’s highest court
26 is the final judicial arbiter of the meaning of state statutes.” *Sass v. California Bd. of Prison Terms*,
27 461 F.3d 1123, 1129 (9th Cir. 2006) (citing *Gurley v. Rhoden*, 421 U.S. 200, 208 (1975)); *see also*
28 *Knapp v. Cardwell*, 667 F.2d, 1253, 1260 (9th Cir. 1982) (“State courts have the final authority to

1 interpret, and, where they see fit, to reinterpret the states' legislation.”). Accordingly, this court
2 will follow the Nevada Supreme Court’s decision and hold that Southern Highlands foreclosed on
3 the property pursuant to a constitutional statute.

4 *iii. Commercial reasonability*

5 Southern Highlands and SFR argue that the foreclosure sale was commercially reasonable
6 because the sale price (\$10,100.00) was not grossly inadequate given the conditions under which
7 the property was sold and because BNYM has not presented any evidence of fraud, unfairness, or
8 oppression. (ECF Nos. 48, 58).

9 BNYM argues that the court should grant its motion because the foreclosure sale for less
10 than 5% of the property’s fair market value (\$215,000.00) is grossly inadequate and because
11 BNYM can establish evidence of fraud, unfairness, or oppression. (ECF No. 49).

12 NRS 116.3116 codifies the Uniform Common Interest Ownership Act (“UCIOA”) in
13 Nevada. *See* Nev. Rev. Stat. § 116.001 (“This chapter may be cited as the Uniform Common-
14 Interest Ownership Act”); *see also SFR Investments*, 334 P.3d at 410. Numerous courts have
15 interpreted the UCIOA and NRS 116.3116 as imposing a commercial reasonableness standard on
16 foreclosure of association liens.³

17 In *Shadow Wood*, the Nevada Supreme Court held that an HOA’s foreclosure sale may be
18 set aside under a court’s equitable powers notwithstanding any recitals on the foreclosure deed
19 where there is a “grossly inadequate” sales price and “fraud, unfairness, or oppression.” 366 P.3d
20 at 1110; *see also Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 184 F. Supp. 3d 853, 857–58
21 (D. Nev. 2016). In other words, “demonstrating that an association sold a property at its

22 ³ *See, e.g., Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, 962 F. Supp. 2d 1222, 1229
23 (D. Nev. 2013) (“[T]he sale for \$10,000 of a Property that was worth \$176,000 in 2004, and which
24 was probably worth somewhat more than half as much when sold at the foreclosure sale, raises
25 serious doubts as to commercial reasonableness.”); *SFR Investments*, 334 P.3d at 418 n.6 (noting
26 bank’s argument that purchase at association foreclosure sale was not commercially reasonable);
27 *Thunder Props., Inc. v. Wood*, No. 3:14-cv-00068-RCJ-WGC, 2014 WL 6608836, at *2 (D. Nev.
28 Nov. 19, 2014) (concluding that purchase price of “less than 2% of the amounts of the deed of
trust” established commercial unreasonableness “almost conclusively”); *Rainbow Bend
Homeowners Ass’n v. Wilder*, No. 3:13-cv-00007-RCJ-VPC, 2014 WL 132439, at *2 (D. Nev.
Jan. 10, 2014) (deciding case on other grounds but noting that “the purchase of a residential
property free and clear of all encumbrances for the price of delinquent HOA dues would raise
grave doubts as to the commercial reasonableness of the sale under Nevada law”); *Will v. Mill
Condo. Owners’ Ass’n*, 848 A.2d 336, 340 (Vt. 2004) (discussing commercial reasonableness
standard and concluding that “the UCIOA does provide for this additional layer of protection”).

1 foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a
2 showing of fraud, unfairness, or oppression.” *Id.* at 1112; *see also Long v. Towne*, 639 P.2d 528,
3 530 (Nev. 1982) (“Mere inadequacy of price is not sufficient to justify setting aside a foreclosure
4 sale, absent a showing of fraud, unfairness or oppression.” (citing *Golden v. Tomiyasu*, 387 P.2d
5 989, 995 (Nev. 1963))) (“*Long*”).

6 BNYM overlooks the reality of the foreclosure process. The amount of the lien—not the
7 fair market value of the property—is what typically sets the sales price. Further, BNYM fails to
8 set forth sufficient evidence to show fraud, unfairness, or oppression so as to justify the setting
9 aside of the foreclosure sale. BNYM claims that its predecessor in interest relied on A&K’s
10 representation regarding the applicable laws and how they affect a deed of trust. *See* (ECF No.
11 49). However, these representations are not relevant to the court’s commercial unreasonableness
12 analysis because A&K made those representations during an unrelated arbitration concerning
13 different property. (ECF No. 49-2). Moreover, BNYM has not provided evidence showing that
14 its predecessor in interest relied on those representations.

15 BNYM also claims that the foreclosure sale was unfair because the CC&Rs provide that a
16 sale pursuant to the covenants on the property cannot extinguish a deed of trust so long as the
17 violations of the covenant were made in good faith and for fair value. (ECF No. 49).

18 However, NRS 116.1104 provides that “[e]xcept as expressly provided in this chapter, its
19 provisions may not be varied by agreement, and rights conferred by it may not be waived.” Nev.
20 Rev. Stat. § 116.1104; *see also Bayview Loan Servicing, LLC v. SFR Investments Pool 1, LLC*,
21 No. 2:14-CV-1875-JCM-GWF, 2017 WL 1100955, at *9 (D. Nev. Mar. 22, 2017) (discussing the
22 reasoning in ZYZZX2); *JPMorgan Chase Bank, N.A. v. SFR Investments Pool 1, LLC*, 200 F.
23 Supp. 3d 1141, 1168 (D. Nev. 2016) (holding that an HOA’s failure to comply with its CC&Rs
24 does not set aside a foreclosure sale, due to NRS 116.1104). Accordingly, language in the CC&Rs
25 has no impact on the superpriority lien rights granted by Chapter 116.

26 Accordingly, BNYM’s commercial reasonability argument fails as a matter of law, as
27 BNYM failed to set forth sufficient evidence of fraud, unfairness, or oppression. *See, e.g.,*
28 *Nationstar Mortg., LLC*, No. 70653, 2017 WL 1423938, at *3 n.2 (“Sale price alone, however, is

1 never enough to demonstrate that the sale was commercially unreasonable; rather, the party
2 challenging the sale must also make a showing of fraud, unfairness, or oppression that brought
3 about the low sale price.”).

4 **IV. Conclusion**

5 In light of the foregoing, BNYM has not provided sufficient grounds for the court to set
6 aside the foreclosure sale.

7 Accordingly,

8 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Southern Highlands’
9 motion for summary judgment (ECF No. 48) be, and the same hereby is, GRANTED.

10 IT IS FURTHER ORDERED that BNYM’s motion for summary judgment (ECF No. 49)
11 be, and the same hereby is, DENIED.

12 IT IS FURTHER ORDERED that SFR’s motion for summary judgment (ECF No. 51) be,
13 and the same hereby is, GRANTED.

14 The clerk shall enter judgment accordingly and close the case.

15 DATED November 20, 2018.

16 
17 UNITED STATES DISTRICT JUDGE